

MEMORANDUM

May 23, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DWYER, DALY, BROTZEN & BRUNO, LLP
Richard S. Kemalyan, Esquire

JOHANNA M. FONTENOT
Principal Deputy County Counsel
General Litigation Division

RE: Michael Webb, Kyle B. Fortson and Charles Wilson v. County of
Los Angeles, et al.
Los Angeles Superior Court Case No. BC 270180

DATE OF
INCIDENT: 1999 - Present

AUTHORITY
REQUESTED: \$60,000

COUNTY
DEPARTMENT: Los Angeles County Probation Department

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2005

SUMMARY

This is a recommendation to settle for \$60,000, a lawsuit filed by Michael Webb, a Deputy Probation Officer II, who alleges that he was subjected to racial discrimination in violation of the Fair Employment and Housing Act, (FEHA) while employed with the Probation Department.

LEGAL PRINCIPLES

Under the Fair Employment and Housing Act (FEHA), an employer is liable for the acts of its supervisors when the supervisor racially or sexually harasses another employee. An employer may also be liable for failing to prevent discrimination. FEHA also imposes liability on an individual employee for committing racial or sexual harassment on another in the workplace.

SUMMARY OF FACTS

Michael Webb has been employed by the Los Angeles County Probation Department since 1982. In 1999, Mr. Webb held the position of Deputy Probation Officer II assigned to the Camp Afflerbaugh juvenile residential facility. Mr. Webb alleges that he was subjected to racial discrimination at Camp Afflebaugh and that he received an unfair Appraisal of Promotability from his supervisors. He alleges that African-Americans received harsher discipline than other employees.

In 2000, Mr. Webb received a written Notice of Intent to Discharge for failing to cooperate with an Internal Affairs investigation. At the time, Mr. Webb was a witness to an incident involving juveniles. Mr. Webb alleges that he did cooperate with the investigator, but the Department attempted to terminate his employment because of his race. Ultimately, Mr. Webb was not discharged.

Mr. Webb also claims that he was unfairly subjected to two additional disciplinary actions. In 2003, Mr. Webb received a letter of warning for having a camera at Camp Afflebaugh without prior authorization. Then, in 2004, he received a 10-day suspension for using profanity. Mr. Webb alleges that non African-American employees did not receive discipline as severe for similar misconduct.

Mr. Webb further alleges that he was denied promotions because of his race.

DAMAGES

Should this matter proceed to trial, we believe the potential damages could be as following:

Loss of Earnings	\$100,000
Emotional Distress	\$150,000
Attorney Fees	<u>\$150,000</u>
Total	\$400,000

STATUS OF CASE


This lawsuit initially involved three plaintiffs: Michael Webb, Charles Wilson, and Kyle Fortson. Charles Wilson and Kyle Fortson were dismissed by motions filed by the County. Both Wilson and Fortson have filed appeals. Expenses incurred by the County in defending all three plaintiffs include attorney fees of \$144,472 and costs of \$12,398.

EVALUATION

A jury may believe that the disciplinary actions taken against Mr. Webb, namely, the Notice of Intent to Discharge and the 10-day suspension, were too harsh for the alleged misconduct. Further, a supervisor of Mr. Webb has testified at his deposition that African-Americans have been more severely disciplined than others. We believe that a jury award of damages coupled with an award of attorney fees could well exceed the recommended settlement amount.

We join with our private counsel, Dwyer, Daly, Brotzen, & Bruno, in recommending settlement of this matter in the amount of \$60,000. The Probation Department concurs with this settlement recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

GNM:JMF:bh